

VIRGINIA CODE COMMISSION

Wednesday, August 13, 2008 – 10 a.m.

General Assembly Building, 6th Floor

Speakers Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards; Ryan McDougale, Jane M. Roush, Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: James F. Almand; Thomas M. Moncure, Jr.; William R. Janis.

OTHERS PRESENT: Leslie Ostrander, LexisNexis; Anders Ganten, LexisNexis; Tod Rose, State Corporation Commission; Joe Face, State Corporation Commission; Jay Spruill, Virginia Bankers Association

STAFF PRESENT: Frank Munyan, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 10:08 a.m. The Chairman deferred action on approving the minutes until a quorum arrived.

PRESENTATION OF CERTIFICATES

Delegate Landes presented bound volumes of the Title 3.1 recodification report to Marty Farber and Ellen Porter along with certificates of appreciation in recognition of their excellent work and dedication in completing the revision. The Chairman stated that this recodification was an unprecedented long process given the staff turnover on this project and further stated that Mr. Farber and Ms. Porter had the most difficult task in evaluating the work that had been done by others and ably finalizing the process. The Commission members applauded Mr. Farber and Ms. Porter.

Upon the arrival of Senators McDougale and Edwards, a quorum was noted.

REVISION OF TITLE 6.1, BANKING AND FINANCE

Miscellaneous and Unresolved Issues

Mr. Munyan advised the members that he would be presenting four chapters at today's meeting for review. He distributed an outline of proposed Title 6.2 dated August 5.

Mr. Munyan advised the Commission of an issue with a group of lenders that is not within this title--pawnbrokers. This group performs a form of lending, but is currently in Title 54.1, Professions and Occupations. Pawnbrokers are licensed by the local governing body, not the Commonwealth. Mr. Munyan suggested that the Commission might want to consider moving the pawnbroker provisions from Title 54.1 to Title 15.2 (Counties, Cities and Towns) or proposed Title 6.2; however, he noted that the workgroup did not take a position on this matter. After discussion, the consensus of the Commission was to leave the provisions in Title 54.1.

Mr. Munyan noted a minor change to the outline. Chapter 11 will incorporate Compliance Review Committee provisions, but these will not be separated into articles as previously stated.

1 In response to a Code Commission request during last meeting's review of § 6.2-1542, fines for
2 violations, staff was asked to contact the State Corporation Commission (SCC) and find out
3 where the money from "a fine or penalty" is deposited. Mr. Munyan contacted the SCC and was
4 told that the funds are deposited into the Literary Fund as required by the Virginia Constitution,
5 but mentioned that Title 12.1 provides that all judgments of the SCC shall be entered and paid by
6 the clerk into the Treasury of Virginia.

7 Also, in response to a Commission request for staff to further investigate the misdemeanor by
8 indictment provision in § 55-525.5 D (§ 6.1-2.13:1) of the Wet Settlement Act, staff responded
9 that no one seemed to know the answer. There is another instance that provides for misdemeanor
10 by indictment and both (Title Insurance and Wet Settlement Act) were introduced by Delegate
11 Butch Davies at the 1996 General Assembly Session. It was the consensus of the Commission
12 that removing the indictment provision would be a substantive change. Mr. Munyan was asked to
13 contact Butch Davies for more information about the purpose of the language and to report back
14 at a future meeting.

15 Chapter 27.2 of Title 55. Real Estate Settlement Agents.

16 Mr. Munyan began the review of Chapter 27.2 by indicating the need for a change in the
17 definition of "Licensing authority" on page 3, lines 65 and 66. In clause (i) of the definition, the
18 language should be amended to read, "...pursuant to this ~~title~~ chapter, Title 6.2, Title 12.1 or Title
19 38.2."

20 The Commission discussed the definition of "Person" and whether to eliminate the definition
21 from the chapter. Mr. Ferguson made a motion to eliminate the definition of "Person" since there
22 is a code-wide definition of "Person" in Title 1 (§ 1-250). Senator Calhoun seconded the motion
23 and the motion was approved.

24 Mr. Ferguson suggested rewording the catchline of § 55-525.10 to read, "Limitation of
25 applicability of chapter" Without objection, staff was instructed to make the suggested change.

26 On page 6, line 145 (§ 55-525.12 D), staff explained that the added reference to subdivision A 6
27 should be removed.

28 Section 55-525.15 (page 9) sets out contract language for disclosure. Judge Roush asked about
29 the requirement that the contract text be printed in 10-point type and suggested adding language
30 that provides for the print to be in "at least" 10 point type. Without objection, staff was instructed
31 to make the change and amend the drafting note to reflect the change.

32 While reviewing § 55-525.21 (existing § 6.1-2.25, last sentence), Mr. Ferguson stated his view
33 that when the General Assembly delegates to a private group or association that has no
34 governmental authority, it is an unlawful delegation.

35 Without objection, staff was directed to merge the Real Estate Settlement Agent Registration
36 Act, which is renamed to Settlements by Lay Real Estate Settlement Agents, with the Consumer
37 Real Estate Protection Act (CRESPA). Mr. Munyan indicated that his concern with merging the
38 two acts is that CRESPA would apply to attorneys conducting settlements on more than four
39 residential properties; however, he will merge the language and bring it back to show the
40 Commission at a future meeting.

APPROVAL OF MINUTES

The Chairman returned to agenda item #2 so that the Commission could approve the minutes from the prior meeting.

A motion was made by Senator Edwards and seconded by Senator McDougale to approve the minutes of the July meeting as written. The motion was approved.

REVISION OF TITLE 6.1, BANKING AND FINANCE (Continued)

Chapter 21, Safe Deposit Boxes

In § 6.2-2102 B, line 70, staff was instructed to change "then co-lessees" to "surviving co-lessees."

While reviewing § 6.2-2103 B, the Commission discussed the addition of the word "guardian" (line 98) to those persons to be granted access to a lessee's safe deposit box. Senator Edwards made a motion to also add "conservator." The motion was seconded by Judge Roush. After further discussion, the motion was approved.

The Commission discussed expanding the provisions of § 6.2-2104 (Duty to deny access to safe deposit boxes under certain conditions) to apply to "appropriate federal or state officials." Mr. Munyan stated that the section imposes a duty on the part of the bank not to allow a renter to remove anything from the box, unless otherwise directed by a court or judgment creditor or tax authority. The Commission discussed ways in which the language could be clarified without changing the meaning, recognizing that there are three categories to be described as individuals who can block access or grant access to boxes (judgment creditor, plaintiff who has obtained a prejudgment attachment with writ attachment, or appropriate state official). Mr. Munyan will redraft the language and bring it back before the Commission.

In § 6.2-2106, the Commission discussed the phrase "legal interest thereon" as it pertains to payment for rental of a safety deposit box and interest accrued. Mr. Spruill stated that the Bankers Association would prefer the section to reflect charges as provided in the rental agreement. Without objection, the Commission instructed staff to make the change.

In §§ 6.2-2109 (line 250) and 6.2-2110 (line 274), the Commission asked Mr. Munyan to look at the language concerning charges and interest accrued and make appropriate changes to reflect charges as provided in the rental agreement.

Without objection, the Commission asked Mr. Munyan to simplify the language in clause (ii) of § 6.2-2114 (bar the right of the company to recover so much of the debt due it) by changing the language to read "bar the right of the company to recover the unpaid portion of the debt."

CLOSED MEETING (§ 2.2-3711 A 29)

Mr. Miller made a motion to amend item #5 of the agenda to reflect that a closed meeting would be held pursuant to § 2.2-3711 A 29 (discussion of award of public contract) instead of § 30-147 B. The motion was properly seconded and approved.

Mr. Miller made a motion to convene in closed session pursuant to § 2.2-3711 A 29 to discuss the Code of Virginia contract. Section 2.2-3711 A 29 provides for a closed meeting when

1 discussing the award of public contracts. The motion was properly seconded by Mr. Ferguson
2 and unanimously approved by the Code Commission.

3 *[CLOSED SESSION]*

4 Upon a motion by Mr. Miller, seconded by Mr. Ferguson, the Commission unanimously agreed
5 to adjourn the closed session and immediately reconvene and return to the public meeting.

6 Mr. Miller made a motion to call the roll and have each member certify that to the best of each
7 member's knowledge (i) only public business matters lawfully exempted from open meeting
8 requirements under the Freedom of Information Act and (ii) only such public business matters as
9 were identified in the motion by which the closed meeting was convened were heard, discussed
10 or considered in the meeting by the Virginia Code Commission, and further, that any member
11 who believed there was a departure from the requirements of subdivisions (i) and (ii) above be
12 asked to so state prior to the vote and indicate the substance of the departure that, in his
13 judgment, had taken place. The motion was seconded by Mr. Ferguson and unanimously
14 approved by the Commission.

15 The roll was called, and all members certified to subdivisions (i) and (ii) in the affirmative.

16 The members recessed for lunch and reconvened at 1:00 p.m.

17 **REVISION OF TITLE 6.1, BANKING AND FINANCE (Continued)**

18 Chapter 11, Savings Institutions; Chapter 12, Savings Banks

19 Mr. Munyan stated that Chapter 11, Savings Institutions and Chapter 12, Savings Banks were
20 prepared as separate chapters for each type of institution. Since then he has learned that there are
21 no savings banks other than one state-chartered savings bank in Portsmouth (Elizabeth). Mr.
22 Munyan suggests that the most practical way to handle these two chapters in the title revision
23 process is to merge the provisions of banks and institutions into a single chapter. He stated that
24 the workgroup is not willing to eliminate savings banks provisions because the banking industry
25 wants to retain as an available option in case savings banks are reinstituted.

26 Mr. Munyan stated that he would like the Commission to review Chapter 11 today to see if there
27 is buy-in to merge the two chapters.

28 Without objection, in § 6.1-194.95 A, staff will insert "savings banks" on line 165 to make the
29 language consistent with current practice.

30 On page 12, Mr. Munyan pointed to stricken § 6.1-194.6, which he proposes to move to
31 proposed Article 4 (Exceptions to Contract Rate of Interest) of Chapter 4. Without objection,
32 staff will move the provisions of § 6.1-194.6 to Article 4 of Chapter 4.

33 On page 21 in subsection B of § 6.2-1119, Mr. Munyan stated that he had moved the stricken
34 language on lines 541 and 542 that reads "The office of any director violating the provisions of
35 this section shall immediately become vacant" to subsection E so the language would apply to
36 the whole section. It was pointed out that the language should have more limited applicability
37 and will be reinstated in subsection B.

38 On page 36 in § 6.2-1136, Mr. Munyan inquired as to whether there should be a titlewide
39 definition of "community," which is not the same as the locality in which the institution is

1 operating. He indicated that the workgroup had not come to an agreement on whether such
2 definition is needed. The consensus of the Commission is that it is not necessary to define
3 "community" in the context of the section.

4 Without objection, staff will move added subsection B of § 6.2-1143 into a separate section.

5 After reviewing Chapter 11, the Commission directed staff to integrate Chapters 11 and 12 and
6 to bring the integrated chapter back before the Commission at a future meeting.

7 **OTHER BUSINESS**

8 Mr. Miller commented that the Commission had authorized staff to renew the Virginia
9 Administrative Code contract with West. A copy of VAC contract renewal is included in the
10 notebooks for informational purposes.

11 **PUBLIC COMMENT**

12 No one from the public came forward during the public comment period.

13 **ADJOURN**

14 Upon a motion made by Senator Calhoun, seconded by Mr. Miller, and approved by the
15 Commission, the Commission adjourned.